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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1626th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 27 October 1997, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. EL SHAFEI

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Fourth periodic report of Iraq

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Iraq (CCPR/C/103/Add.2; CCPR/C/61/Q/IRQ/4)

1. At the invitation of the Chairperson, Mr. Dhari K. Mahmood, Mr. Saad A'Aoon, Mr. Basil Yousif and Mr. Abdul Monem Jawad (Iraq) took places at the Committee table.

2. The CHAIRPERSON welcomed the Iraqi delegation and invited its head to introduce the fourth periodic report of his country (CCPR/C/103/Add.2).

3. Mr. MAHMOOD (Iraq) said that the Iraqi delegation found it gratifying to resume its invariably fruitful and high-level dialogue with the Committee and explained that his Government had endeavoured to prepare its fourth periodic report in accordance with the Committee's guidelines and general comments.

4. In the introduction to its report (paras. 1 to 4), the Government had placed special emphasis on the interdependence of civil and political rights and economic, social and cultural rights, and had drawn attention to the fact that the permanent blockade to which Iraq had been subjected for over seven years for purely political reasons continued to have a catastrophic impact on the right of Iraqi citizens to life, health and food. For want of medicines and adequate food, for example, the infant mortality rate had increased alarmingly and more than one quarter of the population who would constitute the country's future generations was already handicapped owing to the general malnutrition prevailing in the country.

5. Despite its determination to ensure greater respect for the fundamental rights of Iraqi citizens, the Government was experiencing the greatest difficulty in coping with conditions that were increasingly resembling genocide and consequently in ensuring the implementation of the rights set out in the Covenant. For it was clear that the fundamental principle of the right of peoples to self-determination, to freely determine their political status, to freely dispose of their natural wealth and resources, and not to be deprived of their own means of subsistence - on which respect for all the other rights embodied in international human rights instruments was based - was being systematically violated in Iraq. Its violation had begun with the intervention of the United States and the coalition forces in the northern part of the country in April 1991, and since that time Iraq had been the scene of bloody conflicts which were continuing in complete disregard for the most elementary rights of its citizens. Moreover, the ban on flights by Iraqi aircraft north of the 36th parallel and south of the 32nd parallel without any legal justification or international decision was a flagrant violation not only of Iraq's sovereignty over its airspace but also of the people's right to adequate food, since the prohibition also applied to crop dusting planes in agricultural areas, with the result that harvests had declined by 50 per cent during the previous five years.

6. Furthermore, international sanctions were still being applied against Iraq despite the fact that it had fulfilled its obligations under

Security Council resolutions, and he emphasized that the "food for oil" memorandum of understanding signed on 20 May 1996 had resulted in only a very limited improvement in Iraq's food situation, since deliberate efforts had been made to hamper its implementation in violation of the most basic rights of Iraq's people to health and food.

7. Iraq's fourth periodic report described in detail the steps that the Iraqi authorities had been obliged to take to deal with the situation created by the economic sanctions imposed on the country, and in particular to correct the imbalances brought about in social relationships as a result of the absence of food security and the consequent increase in the crime rate. The report also described, in paragraphs 14 to 16, the measures adopted by the Iraqi authorities to bring to justice persons who violated the rights set out in the Covenant and, in respect of the application of article 6 of the Covenant (paras. 22 to 31 of the report), what they had done to provide the Iraqi people with the best possible protection against the most flagrant violations of their fundamental rights. He emphasized in that connection that most of the decrees adopted by the Revolution Command Council, whose provisions might appear to be extremely severe, were essentially of a deterrent nature, and that only rarely were the punishments envisaged actually carried out. In any case, the decrees in question would all be abrogated as soon as the situation in the country returned to normal when the Penal Code could once again be applied.

8. Paragraphs 35 to 47 of the fourth periodic report dealt with the implementation of articles 9 and 10 of the Covenant and described in detail the provisions of Iraqi legislation on the arrest, detention and trial of persons suspected of having committed offences. In that connection he once again emphasized that, owing to the blockade imposed on Iraq, conditions of detention in prisons had deteriorated considerably, particularly in terms of health care and food. Nevertheless, the Iraqi authorities were making every effort to ensure that prisoners were not suffering more than the population at large as a result of a situation that was clearly not of their making.

9. Referring to the application of article 14 of the Covenant (paras. 52 to 61 of the report), he said that everything possible had been done to make sure that accused persons had a fair trial and to ensure the independence of the judiciary, and in particular that the military courts were competent only to hear offences committed by military personnel subject to the Code of Military Justice. Furthermore, referring to article 18 of the Covenant, he recalled that freedom of religion had always been fully guaranteed in Iraq and said that the recently amended article 372 of the Penal Code, mentioned in paragraph 71 of the report, made it a punishable offence for anyone to attack the dignity or beliefs of any religious community. Furthermore, with reference to article 19 of the Covenant, he said that a large number of publications had been distributed on human rights matters, particularly by associations of journalists, the National Union of Young Iraqis, the National Union of Iraqi Students and the Chamber of Commerce; those publications demonstrated that the right to freedom of opinion was fully respected in the country. The Iraqi authorities could provide the Committee with copies of some of those publications; in that way it would know what sort of subjects were dealt with.

10. As for the implementation of article 25 of the Covenant, concerning the right of citizens to take part in the conduct of public affairs, he drew attention to paragraphs 79-83 of the report which described developments in the country since the submission of the third periodic report. Progress along the path of democracy, which had continued in the political sphere despite the difficulties being experienced by the country, had resulted in the maintenance of the Baath party at the head of public affairs. The party was itself actively encouraging young persons to participate in political activities at all levels with a view to achieving the objectives of liberty and democracy which were indispensable in ensuring full respect for human rights in the country.

11. Article 27 of the Covenant was of particular importance to Iraq in view of its ethnic and religious minorities. Iraqi legislation on the subject had been discussed in previous reports and considered in the course of the dialogue between the Iraqi delegation and the Committee during the consideration of the third periodic report (see para. 84 of the fourth report) on the subject of discrimination against minorities and the right of peoples to self-determination. Iraq, which was trying to ensure that minorities could exercise their rights without any discrimination, was experiencing unlawful interference in its internal affairs and with its sovereignty; that was hampering the initiation of a national dialogue between the State and its citizens in the region of Kurdistan, where attempts were being made to consolidate the region's autonomy. The northern part of Iraq was continuing to experience Turkish incursions as well as interference by other countries that were trying to disrupt the dialogue in order to maintain the status quo and their own interests. Iraq had consistently emphasized that a solution to the situation in the northern part of the country could be found only through a national dialogue without foreign interference, so that the citizens of Iraqi Kurdistan would be able to exercise their rights on the basis of respect for the territorial integrity of Iraq and autonomous institutions.

12. His delegation was prepared to reply to questions about the report. It was making available to members of the Committee two copies of the new Iraqi Constitution as well as a review entitled Human Rights.

13. The CHAIRPERSON thanked the delegation for its introductory statement and invited it to reply to the questions put in the first part of the list of issues to be taken up in connection with the consideration of the fourth periodic report of Iraq.

14. Mr. MAHMOOD (Iraq), replying first to question 1 concerning extrajudicial executions, disappearances and torture and the application of articles 6 and 7 of the Covenant, said that Iraq had reviewed the relevant provisions of the Constitution and Iraqi legislation in previous periodic reports and in the fourth report. The delegation had on a number of occasions provided examples of judicial decisions which demonstrated that those provisions were applied whenever the Constitution or laws were violated. He brought to the attention of the Committee two decisions handed down by Iraqi courts (see para. 32 of the report and its annex 1, not distributed). The first concerned two persons who had tortured a suspect to death; they had been sentenced to 10 years' imprisonment and cashiered. He added that they had been brought before the criminal division of the Court of Cassation and been

found guilty of intentional homicide under article 410 of the Penal Code. The second case mentioned in paragraph 32 was that of a person held in custody without a warrant, and he explained that the mother of the person tortured had brought proceedings and that the civil court had awarded her damages which had been paid by the administration that employed the person responsible for the torture - who had been punished in accordance with the Penal Code.

15. With respect to the acts which had allegedly been committed in the course of operations in the northern and southern parts of the country, he pointed out that those two regions were not under Iraqi authority. How could Iraqi police and security forces have committed illegal acts in those regions? If members of the Committee had specific cases in mind, they should indicate the facts, dates and the persons concerned so that action could be taken to determine whether any such violations had actually taken place. The question was worded too vaguely.

16. On the question of disappearances, he explained that a non-governmental commission had been instructed to look into cases of disappeared persons and that the Government was doing everything in its power to follow up its work; official files which could be consulted contained detailed information on disappearances. His Government was prepared to cooperate with the Committee on the subject and an exchange of correspondence had already taken place between the Committee and the Iraqi authorities.

17. Question 2 concerned the use of weapons by members of the police and security forces. The police were subject in particular to the Law concerning the functions and obligations of the police, and police officers whose administrative acts were in violation of the Law incurred disciplinary sanctions. Moreover, any member of the police who committed an act constituting a criminal offence under the Law was brought before a criminal court to be tried in accordance with the Penal Code. That principle was illustrated by the two examples which he had given and which were mentioned in paragraph 32 of the report.

18. With regard to the death penalty (question 3), he explained that the number of offences punishable by death had increased during the years following the imposition of the embargo on Iraq precisely because the embargo had brought about an increase in the crime rate. Iraq, which had to protect its citizens and society in general, was one of the States which continued to impose the death penalty for certain crimes; that was not contrary to the provisions of the Covenant, as indicated by the Committee's general comment 6 on article 6 (sixteenth session). It was noteworthy that, before the imposition of the embargo, the crimes punishable by the death penalty in Iraq had indeed been "the most serious", as indicated in the Covenant, and that that penalty was imposed only in exceptional cases. His delegation emphasized that, in accordance with paragraph 7 of general comment 6, the procedural guarantees prescribed in the Covenant were observed and that Iraq also applied the principles set out in article 14.

19. Since the Iraqi delegation had received the list of issues to be taken up in connection with consideration of the fourth periodic report only on the day of its departure for Geneva, it was unable to provide accurate and official figures on the number of persons who had been sentenced to death, the

number who had actually been executed and the number who had been amnestied. The delegation would contact the appropriate services and the information requested would be communicated to the Committee at a later date.

20. Question 4 concerning the right to a fair trial had already been discussed in detail in the third periodic report (CCPR/C/64/Add.6). At that time the delegation had stated that a general amnesty had been declared in respect of the persons who had participated in the 1991 mutiny, and it now added that the amnesty did not cover persons found guilty of intentional homicide. Question 4 was too general and ambiguous and the delegation was unable to reply to the various points raised in the absence of specific names. It could only state that the death penalty as a form of legal punishment was pronounced only on the basis of the law, in accordance with legal procedure and by a court. It had nothing to add to what had already been stated in the third periodic report.

21. His delegation was surprised that question 5 referred to Revolution Command Council Decree No. 111 of 1990, which corresponded to the period covered by the third periodic report; that Decree had been repealed over six years previously. As for the clarification requested in connection with the meaning of the expression "dishonourable conduct" in paragraph 38 (c) (iii) of the report, he explained that it implied offences involving theft, corruption or honour, which were not covered by the amnesty.

22. Referring to question 6, namely, torture and cruel, inhuman or degrading punishment and freedom of conscience, he pointed out that Iraqi law did not provide for stoning, flogging, or branding. Amputation of the hand was a punishment designed essentially to deter and prevent, and even to intimidate; however, although it existed on paper, it had been carried out only three or four times. A large proportion of sentences entailing amputation had been commuted to terms of imprisonment for two years. His delegation would communicate to the Committee the actual number of such cases as well as figures revealing the decline in the number of crimes committed, which demonstrated the effectiveness of that deterrent. He added that the question whether medical personnel had the right to refuse to participate in such punishments was relevant not in the context of article 18 of the Covenant but of the general obligation of medical personnel and surgeons to do their professional duty. In any event, the problem hardly ever arose in practice since such punishments were carried out only in exceptional cases.

23. With respect to question 7, he explained that his country's Constitution and legislation - and specifically the Act on the National Assembly and Legislative Council of Iraqi Kurdistan and the Act on local assemblies - guaranteed to all citizens, without any discrimination, exercise of the rights set forth in article 25 of the Covenant through participation in the conduct of public affairs. As had already been pointed out, the situation had changed somewhat since the report had been drafted. The right to express disagreement at the political level was guaranteed by the Constitution and by legislation, such as the Political Parties Act, which guaranteed pluralism and would undoubtedly promote pluralism once the situation in the country had been stabilized. Several political parties were active at the present time and it would be possible to form new parties when current exceptional conditions were a thing of the past.

24. With reference to the special security courts and question 8, his delegation wished to state that Iraq's Constitution and legislation, and particularly the Judiciary Act, defined the competence of the courts, as well as legal guarantees, the right to seek remedies and the right to defence, which constituted the fundamental principles applied by Iraqi courts. He recalled that, during the war against Iran, Iraq had set up a revolution court which had been abolished at the end of the war. When Iraq had once again been subjected to a total war and experienced conditions that had been even more harrowing than those during the war against Iran, the Government had been obliged to establish another court of special jurisdiction. That court, however, was presided over by judges and its members were civilian judges from the civil courts; the Advocate-General was also drawn from the civil court system. It applied the laws that were in force in Iraqi territory but its decisions were irrevocable. He emphasized that the court's existence was explained by the situation prevailing in the country and that it would certainly be abolished when that exceptional situation came to an end.

25. The last question in the first part of the list concerned the rights of persons belonging to minorities and the application of article 27 of the Covenant. Members of the Committee would find further information on the subject in the report submitted in June 1996 by Iraq to the Committee on the Elimination of Racial Discrimination (CERD/C/240/Add.3) which gave details about the rights of minorities and the way in which they were protected by Iraq. The matter was also dealt with in paragraphs 84 to 86 of the fourth periodic report. The human rights situation in Kurdistan and the large number of rights enjoyed by the Kurds in the northern part of Iraq showed that Iraqi experience remained the model that should be adopted by adjacent States in protecting the peace and security of the Kurds. As for the rights of the Shi'a, Iraq considered that that question should not have been raised under article 27 of the Covenant since they did not constitute a minority within the meaning of that article and since all Iraqi citizens enjoyed the same rights without any discrimination, regardless of their religion or beliefs.

26. The CHAIRPERSON gave the floor to members of the Committee who wished to put questions to or request clarification of the Iraqi delegation.

27. Mr. EL SHAFEI, after welcoming the Iraqi delegation, noted that the fourth periodic report very often referred to the Committee's general comments; that reflected a desire to know the views of the Committee and its interpretation of the Covenant. It was also gratifying to note that the report contained frequent references to judicial decisions. It also mentioned various difficulties and the Government did not deny that they sometimes hampered the implementation of the Covenant. Since the Iraqi Government was well aware of how the Covenant should be implemented and interpreted, he recalled that article 6 placed States parties which had not abolished the death penalty under the obligation to impose it only "for the most serious crimes". Yet in Iraq the grounds for which the death penalty could be imposed had been considerably extended by a large number of decrees which were listed in paragraph 30 of the report. He wondered whether all those decrees were still in force or whether some had been repealed, since the punishment they provided for in certain cases - amputation or death - was out of all proportion to the offence committed.

28. With respect to security of person, he noted that the Iraqi Constitution offered the necessary guarantees by stating that a person could be arrested only in accordance with the law and on the basis of a warrant issued by the competent authority; however, information from non-governmental organizations (NGOs) and the report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq (E/CN.4/1997/57) revealed a completely different picture of large numbers of cases of torture and other particularly serious violations. He wondered whether steps had been taken to put an end to such violations and specifically whether a law expressly prohibiting torture had been adopted. Iraq had not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and he wondered whether it had failed to do so for a specific reason.

29. The present Constitution guaranteed the right to freedom of expression, assembly and association in one article and he noted that the authors of the report recognized that some of those rights were not fully enjoyed in practice. Iraq had adopted the single party political system. Every State was admittedly free to choose its political system, but the Revolution Command Council made it mandatory for State bodies and ministries to align themselves with the party in power. In the course of the negotiations on the democratic future of the Kurdistan Autonomous Region a bill had been prepared on the establishment of political parties. Its intention had been commendable but its text had been too restrictive, since the executive would have had the right to interfere in the affairs of political parties. The bill had not been adopted but he wondered whether political parties had nevertheless been established in the Kurdistan Autonomous Region and, if so, whether they had been able to participate in all the consultations and elections that had been held in Iraq.

30. Lastly, on the question of disappearances, the Iraqi delegation had stated that a non-governmental commission had been set up to undertake an investigation; that was not good enough since it was easy to imagine how much authority a non-governmental body would be granted.

31. Mr. PRADO VALLEJO said that, having participated in the consideration of Iraq's three other periodic reports, he was obliged to note that the human rights situation in the country had deteriorated. He of course regretted the sanctions that had been imposed on the country, since they inevitably affected the population, and wondered whether a proportion of the proceeds of the petroleum sales to which the Iraqi authorities were entitled was specifically earmarked for children and women and for hospital and medical services. He did not, however, believe that Iraq's serious breaches of the obligations it had assumed under the Covenant could be attributed to the sanctions.

32. Acts of violence and the serious violations perpetrated by members of the armed forces were escalating. Hundreds of persons had been arrested simply on suspicion and large numbers had died in custody. Thousands of persons had disappeared, trials were being held in violation of judicial guarantees and hundreds of persons were being done away with by means of extrajudicial executions simply on suspicion. Although requested to do so by the Committee, the authorities had never investigated complaints alleging serious violations. That in itself was a source of concern, but it was even more disturbing to note that the list of offences for which the death penalty

could be imposed had been considerably lengthened and that the usual reasons given were of a public security or economic nature (theft for example), whereas some of those offences could even be regarded as being of minor importance. The acts constituting offences punishable by death and listed in paragraph 30 of the report were very vague and in addition the principle that criminal legislation could not have retroactive effect - which was guaranteed under article 15 of the Covenant - was also being violated. Guarantees of fair process were not respected and corporal punishment could be inflicted on the basis of a court order; that constituted a flagrant violation of article 7 of the Covenant. It might well be that the provision under which such punishment could be inflicted was never applied in practice, but that was not enough: it should be completely eliminated from the legislative arsenal of the State party. Furthermore, the existence of special courts was worrying; it was unknown whether their hearings were public, whether their decisions could be appealed in any way, whether the defendant was always assisted by a lawyer and in what conditions minors were tried. Lastly, the fact that there was no news of the hundreds of persons detained incommunicado and that nothing was known of the whereabouts of the hundreds of thousands of Kurds who had disappeared constituted a crime against humanity. The Committee had been informed that a general amnesty had been proclaimed but it did not know whether the persons it covered had already spent long years in prison. The authorities of the State party were under a duty to prevent the human rights situation deteriorating further and to ensure that Iraq's citizens could enjoy their rights.

33. Mr. TÜRK said he had read Iraq's fourth periodic report with interest but regretted its brevity, since information on the actual situation was often lacking. He pointed out in particular that paragraph 1 (d), in which the State party indicated that the increase in the rates of all types of crime had forced "the State to take punitive measures of a deterrent, exceptional and provisional nature", should have been supplemented by a long explanation of the nature and scope of such measures. Yet the explanation was lacking and no figures had been given. Although it was understandable that the delegation was unable to provide statistics in reply to written questions, figures could easily have been included in the report itself.

34. The question of arrest was of particular importance, since the most serious violations of fundamental rights often occurred afterwards. In his report (E/CN.4/1997/57), the Special Rapporteur on the situation of human rights in Iraq listed many cases of arbitrary arrest and detention that had been brought to his attention (paras. 10, 12 and 15 of his report). Violations were therefore as serious as they were widespread and he wondered whether, in the context of the dialogue established with the Committee, the Iraqi Government had considered inviting representatives of human rights monitoring bodies in order to dissipate misunderstandings.

35. With reference to the international sanctions imposed on Iraq, which were discussed at length in the report but outside the Committee's competence, he noted that there had been a number of new developments since the report had been prepared (November 1996). A very important factor had been the delay in implementation of the arrangement established by Security Council resolution 986 (1995). Under that arrangement procedures were specified in respect of the sale of petroleum and petroleum products and for the purchase

of humanitarian supplies. However, during the first quarter of 1997 considerable delays had occurred and, in his report to the Security Council (S/1997/685) of September 1997, the Secretary-General had stated: "[...] the decision by the Government of Iraq to suspend the sale of oil [...] is expected to result in a significant shortfall of funds" (para. 55), despite adverse consequences for the humanitarian programme. He referred to the Committee's general comment 6 on article 6, in which the Committee considered it desirable that the States parties should adopt measures "to eliminate malnutrition and epidemics", requested information on the Iraqi Government's policy in respect of the mechanism established by Security Council resolution 986 (1995), and asked what steps were being taken to speed up operations in order to mitigate the sufferings of the civilian population. Sanctions clearly constituted a blunt instrument with unintended effects, but the sanctions imposed on Iraq were in accordance with the Charter of the United Nations and therefore legal, and their purpose was none other than that proclaimed in the relevant resolutions, and specifically Security Council resolution 687 (1991). If the delegation deemed it necessary once again to refer to the sanctions it could also make an effort to place the humanitarian aspects of those sanctions in proper perspective and in particular indicate specific measures that could be taken in view of the situation.

36. Mr. El Shafei took the Chair.

37. Mrs. EVATT said she was still exercised by a number of questions. Civil and political rights and economic, social and cultural rights were obviously interdependent, but the protection of certain rights could in no case justify the violation of others. She regretted that the population had been caused so much suffering by the international sanctions and the economic embargo, which had affected many persons and particularly children, and she sympathized with the Iraqi people in their trouble. However, that situation further increased the Government's responsibility to ensure respect for human rights, and particularly for the rights of the child. She noted that the Committee had unfortunately received no information from independent sources within Iraq itself and that neither the Special Rapporteur of the Commission on Human Rights nor any independent expert had been authorized to visit the country to determine how far the authorities were respecting the obligations they had assumed under international law. She deplored the Iraqi Government's attitude and associated herself with the concern expressed by Mr. Türk on the subject. Specifically, various sources had reported mass arrests and executions following the attempted assassination of Udai Saddam Hussein. Had the persons suspected of involvement in that affair been tried? Furthermore, had an investigation been undertaken and proceedings initiated in connection with the assassination of Hussein Kamel al Majid and his brother, Lieutenant Colonel Saddam Kamel in February 1996? Generally speaking, moreover, it was most disturbing that the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions had indicated that the number of arbitrary executions for political reasons had increased in 1996.

38. Referring to the situation in Iraqi Kurdistan, she said it was common knowledge that the bombardment of Arbil by Iraqi armed forces in August 1996 had resulted in many civilian victims. Persons who had happened to be in the premises of opposition groups had apparently been executed and there were reports of a number of arbitrary arrests as well as cases of torture. It was

also said that a large number of persons had fled to Iran. She would like to know how many women and children had perished during the attack, how many persons had been forced to leave the region and whether allegations of violations of human rights by agents of the State had been investigated. What steps had the Government taken to protect the population against such acts?

39. She noted that a number of the punishments that could be imposed in Iraq were not compatible with the provisions of article 7 of the Covenant. Specifically, deserters could be punished not only by amputation but also by branding. Moreover, what had happened to the medical students who had been arrested for refusing to take part in the application of that form of punishment? She would also like to know whether article 3 of Decree No. 117 of 25 August 1994, according to which the punishment of amputation was mentioned in a person's identity card, was still in force.

40. On the question of disappeared persons, of whom there were several hundred thousand according to Amnesty International (Kurdish civilians, Kuwaitis taken by force to Iraq, persons arrested during the Arbil operations, etc.), had the Iraqi Government taken steps to find a solution and punish the guilty parties?

41. Lastly, it was her understanding that the special courts dealt with economic offences and could impose the death penalty. Since their decisions were apparently final and not subject to appeal where did the provisions of article 14, paragraph 5 of the Covenant stand?

42. Ms. Chanet resumed the Chair.

43. Mr. KLEIN said that the report (CCPR/C/103/Add.2), even though it contained a certain amount of specific information, was a disappointment. He was struck by the fact that the picture presented by the Iraqi delegation of respect for the rights embodied in the Covenant failed to correspond in the slightest to the description of the human rights situation in Iraq provided by outside observers. Admittedly there were always a few discrepancies in such cases, but in that of Iraq the difference was staggering. He noted that, according to the Special Rapporteur of the Commission on Human Rights, there continued to be systematic violation of the civil and political rights of the Iraqi people and that freedom of opinion, expression, association and assembly did not exist in that country (see E/CN.4/1997/57, para. 7). The International Commission of Jurists, for its part, had deplored the complete denial of the right to life and had noted that human dignity was being systematically flouted. Not only the information given in Iraq's fourth periodic report (CCPR/C/103/Add.2) but also that provided orally by the Iraqi delegation was sadly inadequate on all those questions.

44. He was gratified that the Iraqi Government had, in its report, emphasized the importance of article 1 of the Covenant, which was regarded as a peremptory principle of international law. Yet a number of concerns remained, particularly on the subject of disappeared persons, and they had not been dissipated by the Iraqi delegation's replies to question 1 in the list of issues to be taken up (CCPR/C/61/Q/IRQ/4). It would seem that the Iraqi Government was not really worried by those disappearances for otherwise it would have taken steps to do something about them. He wondered who was

authorized to collect information about disappeared persons. Were those who did so intimidated or harassed? What conclusions could be drawn from the results of their investigations?

45. He would also like to know how capital punishment was carried out, whether there were a number of methods of execution and, if so, whether the method decided upon depended on the type of crime committed.

46. Moreover, on the subject of torture, the Iraqi delegation had stated that the legislation in force did not provide for punishment by branding, flogging or stoning. However, Amnesty International had reported that the amputation and branding of a man of 70, sentenced for the theft of a television set and cash, had been broadcast by Iraqi national television in 1994. That contradicted what had been stated by the Iraqi delegation, and he would be grateful if it would clarify the various points he had raised.

47. Mr. ANDO observed that the report (CCPR/C/103/Add.2) was silent about the application of article 26 of the Covenant. More generally, the Iraqi delegation had failed, at the meeting, to provide sufficient supplementary information to give members of the Committee a clear idea of the human rights situation in the country. He endorsed most of the questions put by the other members of the Committee, and particularly those concerning arrests, detention and disappeared persons as well as various forms of political persecution. Moreover, he noted from paragraph 30 of the report that new categories of offences and in particular economic offences were at present punishable by death. Could such offences really be regarded as being among "the most serious crimes" within the meaning of article 6 of the Covenant?

48. On the subject of the special courts, he noted that among other things they exercised jurisdiction in cases involving economic offences referred to them by the Office of the President of the Republic. He would like to know what was meant by an economic offence and requested the Iraqi delegation to give examples. The jurisdiction of the special courts, as described in paragraph 57 of the report, was in his opinion extremely disturbing since it could give rise to abuses.

49. He emphasized the importance of the provisions of article 19 of the Covenant from the standpoint of participation in the conduct of public affairs, and noted that the Special Rapporteur of the Commission on Human Rights had stated that freedom of opinion and expression did not exist in Iraq (see E/CN.4/1997/57). He wondered what criteria and procedures were applied in connection with the establishment of political parties. It was his understanding that the establishment of a party on the basis of racial, regional, religious, anti-Arab and other considerations was prohibited. Consequently, there could apparently be no Communist Party or Kurdish Party, for example. Furthermore, the body responsible for authorizing the establishment of a party was the Council of Ministers; its decisions in the matter could be challenged but it would appear that those concerning Iraq's supreme interests were not subject to judicial oversight. In other words, the courts were apparently not competent to examine the validity of an authorization or a refusal to grant an authorization to establish a party.

He would be grateful if the Iraqi delegation could provide examples of authorizations or refusals to grant authorizations by the Council of Ministers.

50. Mr. KRETZMER endorsed most of the questions already put by members of the Committee. He noted that, under the Constitution, the Revolution Command Council was the supreme State body, and that it issued legislative decrees, a number of which carried the death sentence. How was that body elected? Could all citizens take part in the election of its members and stand for election to it? Could political parties present candidates? Was the mandate of the Revolution Command Council limited and, if so, were elections held from time to time? He also wondered to what extent the Council was required to respect the provisions of the Constitution. What machinery guaranteed that its decisions were in conformity not only with the Covenant but also with the Iraqi Constitution? The report (CCPR/C/103/Add.2) mentioned a number of the Council's decrees under which severe penalties were imposed. How could such decrees be compatible with the Constitution and in particular with article 22, which stated that human dignity must be safeguarded and that any form of physical or mental torture was prohibited? Which bodies were competent to decide whether the Council's decrees were compatible with the Constitution?

51. Since, according to the Iraqi delegation, the independence of the judiciary was protected by law, he would appreciate clarification of the following points. By whom were judges appointed? Were they appointed for life? Could they be dismissed? Could the Revolution Command Council adopt decrees incompatible with a judicial decision?

52. On the question of disappeared persons, he endorsed Mr. Klein's observation concerning the discrepancy between the information supplied by the Iraqi authorities and that by other sources, and particularly by the Special Rapporteur of the Commission on Human Rights. Moreover, since it was illegal to arrest and detain a person without a warrant in Iraq, it could reasonably be assumed that the courts were competent to examine complaints submitted in connection with disappearances. Was that so and had that indeed happened? He would be grateful if the Iraqi delegation could supply examples of judicial decisions on the subject. He also wished to draw its attention to a number of cases of disappeared persons that had already been referred to the Iraqi authorities by various international bodies which had not so far received any reply. There was, for example, the case of the writer and journalist Aziz al-Sayyid Jassem, 55 years of age, who had been arrested on 14 April 1991 and about whom nothing had been heard since. There was also Mazin 'Abd al-Mun'im Hassan al-Samarra'i, who had disappeared in August 1988 and whose case had been looked into by the Working Group on Enforced or Involuntary Disappearances. Other examples included Gewargis Mormiz Oraha, Yousip Adam Khamo, Amira Kora Odisho, Shimon Khoshaba al-Hozi, Petros Elia Toma and William Matti Barkho, who belonged to the Assyrian community and were members of the Presidential Guard and were said to be suspected of having participated in the attempted assassination of President Saddam Hussein in 1996. He would appreciate information about all those persons and wished to know in particular whether their disappearances had been investigated and, if so, with what result. Lastly, he noted that a number of persons had been arrested

during the measures taken by the Government against the population of Arbil and that nothing had been heard of them since. There again information about them would be welcome.

53. Mrs. MEDINA QUIROGA said she was aware of the suffering of the Iraqi people, with whom she sympathized, and emphasized that the Government must do nothing to aggravate the hardships they were already experiencing.

54. In her view, the report of Iraq (CCPR/C/103/Add.2) threw no light on the human rights situation. Reference was made to a number of laws, but their content was unclear. For example, paragraph 38 (e) suggested that perpetrators of political offences could be sentenced to death; that was without any doubt incompatible with article 6 of the Covenant; the list of acts punishable by death in Iraq was also at variance with that article. Furthermore, since acceding to the Covenant, Iraq had added new offences to the list, and that too was contrary to that instrument. Generally speaking, it would appear that human rights were not really protected in Iraq. The Iraqi delegation had referred to the interdependence of civil and political rights and social, economic and cultural rights, but she pointed out that civil rights and political rights were also interdependent.

55. She associated herself with the questions put by Mrs. Evatt concerning the application of articles 6 and 7 of the Covenant and those raised by Mr. Klein concerning ways in which capital punishment was carried out. She also endorsed Mr. Kretzmer's questions concerning the Revolution Command Council, to which she would add the following: could that Council or any other body dismiss a judge? She was under the impression that it could do so but would appreciate clarification of the matter.

56. She would also appreciate information on the composition and jurisdiction of the special courts referred to in paragraph 57 of the report, and also on how their judges were appointed. Was there a body before which their decisions could be appealed? It seemed that Iraq had other types of special courts apart from those mentioned in the report, since according to certain sources various persons had been sentenced to death by special courts subordinate to the Ministry of the Interior and the Ministry of Defence. Was that so? Moreover, in order to dissipate any misunderstandings, she also asked the Iraqi delegation to explain how the judiciary functioned.

57. Lastly, referring to article 19 of the Covenant, she would like to know whether Revolution Command Council Decree No. 840, which constituted a serious violation of freedom of expression, was still in force.

58. Mr. BHAGWATI said that the sole purpose of the questions and observations of members of the Committee was to stimulate the dialogue with the representatives of the Iraqi Government with a view to the improvement of the human rights situation in the country. Iraq was admittedly experiencing difficulties owing to the economic embargo, yet they could not justify the violation of the rights embodied in the Covenant. Iraq had acceded to that instrument and its authorities should therefore ensure that all its provisions were respected.

59. He associated himself with the questions put by other members of the Committee, and in particular by Mr. Kretzmer. According to the NGOs and other sources, the rights embodied in the Iraqi Constitution existed only on paper. He would like to know what was the exact status of the Covenant in the country, whether it was an integral part of domestic law and whether it was directly applicable by Iraqi courts. Furthermore, could a presidential decree be challenged on the grounds that it was contrary to the provisions of the Covenant? Generally speaking, were decrees subject to judicial oversight?

60. It appeared that the judgements of the special courts were final and not subject to appeal. How could that be compatible with the provisions of article 14 of the Covenant? Moreover, Decrees Nos. 39 and 111 of the Revolution Command Council stated that persons accused of certain serious crimes could be tried by a special court subordinate to the Ministry of the Interior or the Ministry of Defence. It seemed that such courts were not the same as those mentioned in paragraph 57 of the report, and he would appreciate clarification of the matter. Furthermore, it appeared that the charges brought by and the judgements of the special courts were not made public. He asked whether that was so and also how the judges of such courts were appointed. Did they have a great deal of experience and were the persons tried by the special courts entitled to legal aid?

61. Moreover, it was extremely important to know whether or not punishments entailing amputation of the hand or foot, ablation of the ear and branding were still applied in Iraq. The fact that a number of decrees providing for that type of punishment had not been repealed suggested that they were still in force, and in any event the idea of televising a punishment was horrifying. Moreover, a number of decrees of the Revolution Command Council had imposed new punishments for new offences, with retroactive effect. How could that be compatible with the provisions of article 15 of the Covenant?

62. He requested information about possibilities of employment for members of Iraq's Kurdish, Turkish and Assyrian minorities. What proportion of the Iraqi population and the civil service did those minorities represent? Lastly, was Revolution Command Council Decree No. 95, which prohibited women from holding certain jobs, still in force?

63. The CHAIRPERSON invited members of the Committee to continue their consideration of the fourth periodic report of Iraq (CCPR/C/103/Add.2) at the next meeting.

The meeting rose at 1.05 p.m.